

Members

Rep. Matt Pierce, Chairperson
Rep. Philip GiaQuinta
Rep. Kathy Richardson
Rep. Robert Behning
Sen. Sue Landske
Sen. Connie Lawson
Sen. Jean Breaux
Sen. Lindel Hume



CENSUS DATA ADVISORY COMMITTEE

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Robert Rudolph, Attorney for the Committee
Chris Baker, Fiscal Analyst for the Committee

Authority: IC 2-5-19

MEETING MINUTES¹

Meeting Date: August 26, 2008
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St., Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. Matt Pierce, Chairperson; Rep. Philip GiaQuinta; Rep. Kathy Richardson; Sen. Jean Breaux; Sen. Lindel Hume.

Members Absent: Rep. Robert Behning; Sen. Sue Landske; Sen. Connie Lawson.

The Chair, Representative Pierce, called the meeting to order at 1:39 p.m. The Committee members introduced themselves.

Representative Pierce announced that the meeting would examine the disqualification of absentee ballots due to failure of election officials to initial ballots. The Chair cited the mayor's election in Anderson² and a city council election in Shelbyville³ during the 2007 municipal elections as examples where the outcome of an election was changed because absentee ballots were not initialed by election officials as required by Indiana law.

1. Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

2. Where the apparent winner, but the ultimately unsuccessful candidate, is a Democrat.

3. Where the apparent winner, but the ultimately unsuccessful candidate, is a Republican.

2007 Anderson Mayoral Election

The Chair recognized Mr. Michael Quick, representing Jim Mansfield, the Democratic candidate for mayor of Anderson during the 2007 municipal elections. Mr. Quick summarized the facts of the case which are also contained in a copy of the appellate brief filed with the Indiana Court of Appeals on behalf of Mr. Mansfield.⁴ Mr. Quick also distributed photocopies of the 18 absentee ballots from Precinct 46 in Anderson that were uncounted because they were not initialed by a Republican poll clerk.⁵ Mr. Quick described the procedural bind his client was in because he could not institute an election contest to challenge the results of the election because a statutory, 14-day deadline to institute a contest had passed before his client was aware that the disputed absentee ballots had not been counted.⁶ Mr. Quick also emphasized that there was no evidence that the disputed ballots were cast fraudulently.

There was discussion among Committee members and several questions asked of Mr. Quick regarding the procedural issues. In response to a question from the Chair, Mr. Quick stated he would have asked for a special election to be held in Precinct 46 had he been able to maintain an election contest. Representative Richardson noted that the county political parties and not the circuit court clerk make appointments of individuals as poll clerks, the lack of whose initials resulted in ballots being disqualified. Senator Breaux asked several questions about procedural details about the recount, how voters would know that poll clerk initials are required to validate their ballots, and how a voter who recognized that the absentee ballot lacked validating initials could remedy the situation. Representative GiaQuinta asked whether there is not some other device that could be used to validate ballots, such as numbering or bar codes.

2007 Shelbyville City Council, Fourth Ward, Election

The Chair recognized Representative Eberhardt who introduced the individuals who would speak about the 2007 Shelbyville City Council, Fourth Ward election. Rep. Eberhardt introduced Ms. Carol Stohry, Shelby County circuit court clerk; Tamara Sullivan, Republican candidate for the Shelbyville City Council, Fourth Ward; and Jason Wischhmeyer, Ms. Sullivan's attorney. Representative Eberhardt told the Committee that the legal action in Ms. Sullivan's case has been completed.⁷

4. A copy of the appellate brief is Exhibit #1 to these Minutes.

5. A copy of each of these ballots collectively is Exhibit #3 to these Minutes. The ballots have a consecutive labeling of "Ex 70" through "Ex 87" written on one side of each ballot.

6. During Committee discussion, there was uncertainty regarding what statutes imposed the 14-day requirements. IC 3-12-6-2 requires a "candidate who desires a recount of votes must file a verified petition no later than noon fourteen (14) days after election day." Similarly, IC 3-12-8-5 requires a "candidate who desires to contest an election or a nomination under this chapter must file a verified petition with the circuit court clerk of the county that contains the greatest percentage of the population of the election district no later than noon fourteen (14) days after election day".

7. The Indiana Court of Appeals handed down a decision in Ms. Sullivan's case on July 24, 2008. *See, Sullivan v. Krughoff*, 889 N.E.2d 1289 (Ind.App. 2008). The Court of Appeals decision may be consulted for a recitation of the relevant facts of the case. A copy of the decision is Exhibit #5-3 to these minutes.

Ms. Sullivan and Mr. Wischmeyer outlined the circumstances of the election, explaining that unlike the situation in the Anderson mayoral election, the disputed absentee ballots in the Shelbyville City council election were initialed, but in the "wrong" place: on the secrecy envelopes rather than on the absentee ballot cards themselves.

Senator Breaux commented that from hearing about the two different cases, it does not seem as if procedures for handling absentee ballots are standardized throughout the state. In response to a question from Representative Pierce, the witnesses indicated that all absentee ballots were handled in the same manner in Shelby County: initials and the circuit court clerk's seal were placed on the secrecy envelopes. Ms. Stohry explained the rationale for this practice is that the secrecy envelopes provide a place for the voter to cast a write-in vote, so the secrecy envelope had been considered to be part of the ballot.

Committee members discussed whether statutory requirements are consistently implemented, how election officials can get definitive answers to questions they have, and whether initialing and placing the circuit court clerk's seal on ballots really add security to the ballots. Senator Hume asked about the historical background for initialing ballots and said that every legitimate vote should be counted. The Chair said that initialing ballots probably was a measure used to detect vote fraud; the Chair expressed doubt that the requirement continued to further that interest in a way that properly balanced the competing interest of counting all legitimate votes. Senator Breaux said that the absentee ballot process should be standardized throughout the state and outdated processes should be eliminated.

Before the conclusion of the meeting, the Chair directed staff to distribute to Committee members copies of statutes, appellate court decisions, and other materials relating to the meeting topic.⁸ The Chair announced that the next Committee meeting on September 30 will focus on campaign finance and the last meeting of the interim would be sometime in mid October.

The Chair adjourned the meeting at 2:56 p.m.

8. Staff distributed copies of the following:

IC 3-12-1, "Ascertaining Results of Elections", (Exhibit #4-1 to these Minutes) with a separate excerpt of IC 3-12-1-12 and IC 3-12-1-13 (Exhibit #4-2 to these Minutes).

The following Indiana court decisions: Hughes v. Brooks, et al., 597 N.E.2d 998 (Ind.App.1992) (Exhibit #5-1 to these Minutes); Horseman v. Keller, 841 N.E.2d 164 (Ind.2006) (Exhibit #5-2 to these Minutes); Sullivan v. Krughoff, 889 N.E.2d 1289 (Ind.App. 2008) (Exhibit #5-3 to these Minutes).

Materials submitted by the Indiana Election Division entitled "Initials on Absentee Ballots" (Exhibit #2 to these Minutes.)